

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JUAN VILLAR-SANCHEZ,
Petitioner,

v.

C.A. No. 04-11811-NMG

DEPARTMENT OF CORRECTION
COMMISSIONER KATHLEEN DENNEHY,
Respondent.

PROCEDURAL ORDER

For the reasons stated below, petitioner's application to proceed without prepayment of fees is denied without prejudice, and the petitioner is directed to either pay the \$5 filing fee for the new action or submit a new application to proceed without prepayment of fees with a certified prison account statement within 42 days of the date of this order.

BACKGROUND

On August 17, 2004, petitioner Juan Villar-Sanchez filed a petition for a writ of habeas corpus and an application for waiver of the filing fee. However, Villar-Sanchez did not submit a certified prison account statement with his application.

ANALYSIS

A party filing a Section 2254 habeas corpus petition must either (1) pay the \$5 filing fee for habeas corpus actions or (2) file an application to proceed without prepayment of fees. See 28 U.S.C. § 1914(a) (filing fees); § 1915 (proceedings in forma pauperis). An application for waiver of the filing fee must be accompanied by a document certifying the amount of funds on deposit to the petitioner's credit at his institution of incarceration. See Rule 3(a) of the Rules Governing Section 2254 Cases (if a petitioner desires to prosecute

petition in forma pauperis, he shall file the affidavit required by § 1915 and a certified statement of amount of funds in prisoner's institutional account); 28 U.S.C. § 1915(a)(2). For the convenience of litigants, this Court provides a standardized form for fee waiver applications. Because Villar-Sanchez has not submitted a certified prison account statement, he shall be granted additional time to do so.

CONCLUSION

ACCORDINGLY, the application to proceed without prepayment of fees is DENIED WITHOUT PREJUDICE. If Villar-Sanchez wishes to proceed with this action, he shall, within 42 days of the date of this order, submit the \$5 filing fee or a new application to waive prepayment of the filing fee with a certified account statement for the 6-month period immediately preceding the filing of this petition or this action will be dismissed without prejudice for failure to pay the filing fee.

The Clerk is directed to send Villar-Sanchez an application to proceed without prepayment of fees and affidavit with this order.

SO ORDERED.

Dated at Boston, Massachusetts, this 20th day of August, 2004.

s/ Nathaniel M. Gorton
NATHANIEL M. GORTON
UNITED STATES DISTRICT JUDGE